

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**ANNA STAFFORD, A.H., minor child,**

Civil Case No. 3:13-CV-01454-KI

Plaintiffs,

OPINION AND ORDER ON  
APPOINTMENT OF COUNSEL

v.

**TODD RANSFORD,**

Defendant.

Anna Stafford  
5590 SE Nelson Rd.  
Olalla, WA 98359

*Pro Se* Plaintiff

Lindsey H. Hughes  
Jamie E. Valentine  
Keating Jones Hughes PC  
One SW Columbia, Suite 800  
Portland, OR 97258-2095

Attorneys for Defendant

KING, Judge:

Plaintiffs Anna Stafford and minor A.H. bring a case against Todd Ransford. Pending before me are Stafford's Motion for Appointment of Counsel [9] and Motion for Drug Exam and Psychological Testing on Dr. Todd Ransford [16]. For the following reasons I deny both motions.

## DISCUSSION

### I. Appointment of Counsel

Generally, there is no constitutional right to counsel in a civil case. United States v. \$292,888.04, 54 F.3d 564, 569 (9<sup>th</sup> Cir. 1995) ("'\$292.888.04'"); United States v. 30.64 Acres of Land, 795 F.2d 796, 801 (9<sup>th</sup> Cir. 1986). However, pursuant to 28 U.S.C. § 1915(e)(1) (formerly § 1915(d)),<sup>1</sup> this court has discretion to request volunteer counsel for indigent plaintiffs in exceptional circumstances. \$292,888.04, 54 F.3d at 569; Wood v. Housewright, 900 F.2d 1332, 1335 (9<sup>th</sup> Cir. 1990); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9<sup>th</sup> Cir. 1986). While this court may request volunteer counsel in exceptional circumstances, it has no power to make a mandatory appointment. Mallard v. U.S. Dist. Court for the Southern Dist. of Iowa, 490 U.S. 296, 301-08 (1989). There are no funds available to pay the services of such volunteer counsel.

In order to determine whether exceptional circumstances exist, this court evaluates the plaintiff's likelihood of success on the merits and the ability of the *pro se* plaintiff to articulate his or her claim in light of the complexity of the legal issues involved. \$292,888.04, 54 F.3d at 569; Wood, 900 F.2d at 1335-36; Wilborn, 789 F.2d at 1331. However, "[n]either of these

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<sup>1</sup> The text of 28 U.S.C. § 1915(e)(1) reads "[t]he court may request an attorney to represent any person unable to afford counsel."

factors is dispositive and both must be viewed together before reaching a decision on request of counsel under section 1915(d).” Wilborn, 789 F.2d at 1331; Terrell v. Brewer, 935 F.2d 1015, 1017 (9<sup>th</sup> Cir. 1991).

There are no exceptional circumstances necessitating volunteer counsel for Stafford. The allegations contained in the Complaint do not demonstrate a strong likelihood of success on the merits. See Stafford v. Heifetz Halle Consulting Group, LLC, Civil Case No. 3:13-1057-KI, 2013 WL 4501048 (D. Or. Aug. 21, 2013). Furthermore, Stafford has sufficiently articulated the basis of her claim, and the legal issues are not so complex that counsel would be necessary. I deny the motion for appointment of counsel.

## II. Motion for Drug Exam and Psychological Testing

Stafford seeks an order from me to require defendant Ransford to undergo drug and psychological testing. Aside from the motion being premature, Stafford fails to meet her burden of showing Ransford’s mental or physical condition is in controversy. Fed. R. Civ. P. 35(a)(1).

## III. Ransford’s Motion to Dismiss

Ransford filed a Motion to Dismiss on November 15, 2013. Stafford’s response was due on December 2. Since no ruling was made on her Motion for Appointment of Counsel before her response was due, I now extend the deadline for Stafford to file a response to the Motion to Dismiss. Stafford should file her response on or before January 13, 2014. Ransford may file a reply, if he believes one is necessary, on or before January 27, 2014. The Court will take the motion under advisement on January 27, 2014.

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**CONCLUSION**

For the foregoing reasons, Stafford's Motion for Appointment of Counsel [9] and Motion for Drug Exam and Psychological Testing on Dr. Todd Ransford [16] are denied.

IT IS SO ORDERED.

DATED this 23<sup>rd</sup> day of December, 2013.

/s/ Garr M. King  
GARR M. KING  
United States District Court Judge